EXHIBIT 10

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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MARIA ANDRADE, et al.,

Plaintiff,

v. Case No.:

AMERICAN FIRST FINANCE, INC., 3:18-cv-06743-SK

et al.,

Defendants.

____

VIDEOTAPED DEPOSITION OF

MARK GUSTAFSON

DATE: Wednesday, March 16, 2022

TIME: 9:12 a.m.

LOCATION: Remote Proceeding

Los Angeles, CA 90017

REPORTED BY: Aerik Branch, Notary Public

JOB NO.: 5118253

as of such.

Everyone has already introduced themselves. So hearing no objection, I will now swear in the witness.

Please raise your right hand.

WHEREUPON,

MARK GUSTAFSON,

called as a witness, and having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

THE REPORTER: Thank you.

You may now proceed.

EXAMINATION

BY MR. GREEN:

Q All right. Good morning, Mr. Gustafson.

A Good morning.

Q My name is Robert Green, and I represent the plaintiff in this case. I'll be taking your deposition today.

Could you state your name and spell your last name for the record, please, sir?

A Sure. It's Mark Gustafson, and the last name is spelled G-U-S-T-A-F-S-O-N.

Q And Mr. Gustafson, where are you employed?

A Analysis Group.

Q And what do you do there?
A I'm a principal with Analysis Group. So my responsibilities include both management of the firm as well as providing economic consulting services.
Q Okay. And where are you located today?
A Physically, I'm in downtown Los Angeles, in our office.
Q In the office of Analysis Group?
A Yes.
Q Yeah. Are you in, like, a conference room?
A Correct.
Q And is anyone else in the room with you?
A Mr. Balogh is also in the room.
Q Okay. Anyone else?
A No.
Q All right. And do you have any notes or other electronic devices available to you other than the remote proceeding screen?
A I have two -- I have a clean copy of Mr. McFarlane's report, and a clean copy of my report.
Q Okay.
A And my coffee. And that would be it.
Q Okay. And you understand the testimony you give today will be your own testimony? You're not permitted to communicate with anyone else in any way

Q All right. And what court was that in?
A I would have to go check my CV and try and figure that out.
Q Okay. And when did that take place?
A Approximately five years ago. Probably, it was more like six, maybe, probably that timeframe.
Q Okay. And who were the attorneys that you worked with on that case?
A There was someone named Marty Burke, who I don't believe is with Burr & Forman anymore. And I believe Bryan Balogh was also on the case. And another attorney, Doug Kilby, who I believe was with a different firm.
Q What was your assignment in this case?
A I was to -- I guess I would -- what I recommend is going back to the report and -- and reading how I articulated it in the report. But my recollection is, basically, to review Mr. McFarlane's opinions and respond as appropriate.
Q Do you recall approximately when you were retained?
A It would have been in 2021, I believe. I would -- probably in the latter half of the year. But I would have to go back and check my records to know for sure.

Q For this part of your report, you're not relying on any other testimony by any person other than Mr. Britt, are you?

A That is correct.

Q Let's look at his testimony at 112, 14 through 113, 4. He talks about what the standard rates are or what he calls the "default rate." I hesitate to use that term because people get confused by thinking that it means you didn't pay when it's actually the amount you did pay. So we'll call it the "standard rate."

Did you read these portions of Mr. Britt's testimony?

A Yes.

Q And you see that under his testimony, the standard rates -- if you look at 112 starting at line 15 -- in 2015, the standard rate was 120 percent; correct?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A Yes, I think he says -- or the question is that 2015 -- Ms. Andrade, "at 120 percent, I take that was the default rate at that time?" And he says, "That's correct." So he is saying that's the default or standard rate in 2015.

Q Right. And then if you go down to the bottom

of the page, over into the top of page 113.

A Yes.

Q Okay. Actually, I'm wrong.

Okay. So then we're looking at lines 18 to 25, he says that in 2017 the rate increased to 144.59 percent as the standard rate; correct?

MR. BALOGH: -- form.

THE REPORTER: Acknowledged.

A Yes. He said it increased in 2017.

Q To 144.59 percent; correct?

A Yes.

Q And then in 2020, it increased to 170 percent. Is that correct? Is that what it says?

I didn't hear the answer.

A I -- I didn't hear an acknowledge on the objection.

MR. BALOGH: He corrected the question. He said, "Is that what it says," so I didn't object.

THE WITNESS: Okay.

See because -- I -- the deposition says, "And then," there was "a change since 2017?" "Yes. There was a change in 2020 to 170" -- 170 percent. Correct. So I believe that's what he's testifying.

BY MR. GREEN:

Q Okay.

A That's on the top of 113.
Q Moving on to the next section of your report, for certain purposes, you look at the Consumer Financial Protection Bureau's Consumer Credit Card Market Reports; correct?
A Yes.
Q Are you looking at the report? Or did --
A Yeah. I'm sorry, yeah, I didn't know you were waiting for me. Yes. I --
Q Okay. Why did you select these reports to use in your opinion?
A So the benefit of the CFPB data, as opposed to other sources like something from the Fed, is it actually breaks it up by credit score. So we can differentiate rates that are charged to people with different levels of creditworthiness or -- yeah, credit scores.
Q Okay. And you find these reports to be reliable?
A I have no reason to doubt their accuracy.
Q And you're willing to rely on them; correct?
A Yeah.
Q As an expert in the case, yes?
A Yeah, I -- I am relying on it. That's true.
Q And I know you include some of the reports in

your opinion or in your report, but I'd like to mark them for the record.

A Let me know when it's up.

Q Okay. I've marked as Exhibit 106 a document by the Consumer Financial Protection Bureau labeled as the December 2017 report entitled "The Consumer Credit Card Market." When you get a chance, take a look at that, briefly scan through, tell me if that looks like the report that you're relying on.

(Exhibit 106 was marked for identification.)

A It's 352 pages, so it's pretty long.

Q Does that sound about like the report you used?

A Yeah. And the date is December 2017. Let me just check the citation and we can see if that -- sorry, it's just very long. Trying to find page 72.

Yeah, that -- that seems -- seems like the report.

Q Okay. And you found in this report that some of the data that you're relying on or cite to?

A Yes.

Q All right. Let's do the other one.

A Is there a way to download it so I can go to different parts of it more easily? Or do I have to work

within the Exhibit Share?
Q There should be, on your screen --
A I -- yeah, I've --
Q -- and I'm not going to spend too much time in here, but there should be download button across the top.
A Yeah, I got it. Yeah.
Q So I've marked as Exhibit 107 a report by the Consumer Financial Protection Bureau labeled September 2021, titled "The Consumer Credit Card Market." Do you see that?
(Exhibit 107 was marked for identification.)
A I do.
I apologize, I'm going to turn my phone off, which happens to be ringing. My friend "Scam Likely" is calling me.
Q Good to know.
A Sorry.
Q It's okay.
A I'm sure you have the same friend.
Okay. Sorry, you're saying September --
Q 2021. And again, is this a report that you're relying on for part of your opinions?
A Here, let me -- let me find the -- I mean, it

looks like. But let me just find citation on 21, and then I'll -- yeah, it seems like the right report.

Q All right. And you excerpted parts of these reports that we've marked as Exhibits 106 and 107 in Appendix C of your rebuttal report; correct?

A Yes.

Q And in particular, you refer to the section of the CFPB reports that discuss Total Cost of Credit for general purpose credit cards and private label credit cards; correct?

A Yes.

Q And did you conclude that in some way these types of consumer credit are reasonable proxies for the credit extended by AFF, for purposes of your opinion?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A So what I did was try to evaluate whether or not the 10 percent kind of benchmark rate that Mr. McFarlane used was a reasonable rate. So what I was trying to do was look out at the marketplace where we could find information on rates that are charged for unsecured credit. And these are the data that I found that were -- that gave me the ability to look at those rates by credit scores. So my -- and what they showed me was that the rates that I'm seeing for the lower

tiers of credit scores are higher than the 10 percent but-for rate that was used.

But that's the -- the purpose of looking at these reports. Whether I went -- I didn't do the reverse and say, "Let me look at the AFF retail installment sales contracts and try and find something that is commensurate with that and figure out what rate kind of should have been charged for those," if that distinction makes sense.

Q Okay. Do you have any idea of what lenders' data might be included in the data that you excerpted from these reports? Just in general.

A So they would be -- are you saying, like, U.S. Bank or Bank of America?

Q Yeah, like, who do you think it would be? Or who do you think some of them might be?

A It would be issuers of credit cards, so people who issue Visa or Mastercard or other types of credit cards on the -- the general purpose credit. The private label cards would be things that are kind of merchant or retailer specific, so like a Macy's card or something like that.

Q Okay. And those are actors that you would consider to be knowledgeable about how to price their products in the market they're operating, would you not?

A I -- I didn't -- I didn't make that determination. They're definitely entities that are active in -- active in the market, issuing credit cards.

Q Well, you, as an economist, you would expect corporations like U.S. Bank and Macy's and the like to be somewhat knowledgeable about how to price their products in the markets they're operating, would you not?

A I would expect that they're offering rates that they think are -- yeah, the -- the rates that they can do best at operating their businesses.

Q Okay. In paragraph 59 of your report, you referred to the Total Cost of Credit. What does that refer to in this context?

A That -- that's the -- what is measured by the CFPB. So it's both the interest received by the entity offering the credit as well as the fees that they receive as well. So it's the -- the total cost to the consumer for the credit that they received.

Q Okay. So everything that the consumer pays, interest, fees, whatever, right?

A Yes.

Q It's not the cost of credit to the lender, which would be a different calculation. It's the cost of credit to the consumer, considering all the aspects

of that financial product; correct?

A It's the cost the consumer is paying. I'm not sure the distinction you're making when you say cost "to the lender." But it's -- it is the -- what the consumer is paying, correct.

Q Okay. And the data that you pulled from the report shows different rates of the Total Cost of Credit for different levels of credit scores with the definitions that are included in your Appendix C; correct?

A Yes.

Q So if you look at that, Appendix C has got -- "subprime" is defined as consumers with credit scores 580 to 619; correct?

A Yes.

Q And "deep subprime" includes consumers with credit scores of 579 or less; correct?

A Yes.

Q And you would expect that there are many members in the alleged class in California that are within these ranges; correct?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A Yes, I would expect that the -- the average borrower to be among the lower credit score tiers.

There are probably also people under the "thin or stale" credit score files or the "credit invisible" as well.

Q Okay.

A That doesn't mean everyone in the class falls there, but I would expect most fall there.

Q So looking at your Appendix C on the second page, you've got the information from the 2017 CFPB credit card report, right?

A Yes.

Q And that shows data for the year 2016; correct?

A Yes.

Q So looking at -- first of all, can you tell me the difference between figure 3 and figure 4 on that page?

A I believe figure 4 is limited to revolving accounts, and figure 3 is broader than that. But we should go to the report to find the exact --

Q So as you understand it -- just I don't want to get into a lot of detail; I just wanted to get a basic understanding of why there are two different charts here. What does that mean?

A So I think -- I'm just looking at the -- or, I think, I've -- to answer it, to give you a good answer, I'd want to go back and look at the definitions in the

report. I think revolver is -- if you don't want me to do that, I'm just answering from my recollection as I sit here now. It might be revolving account are those that you're carrying a balance from month to month. But I would want to go back to the report just to make sure --

Q Okay. Well, there's not a whole lot of difference between the data in the two tables. Anyway, just trying to get some understanding of why there were two.

If we look at -- which table were you using to come up with your numbers in paragraph 60?

A So -- so you get to the similar -- you get to a similar place. I'm just saying approximately 40 percent.

Q Okay.

A So you get approximately the same place.

Q So you could use either.

Okay. So I guess, looking at your paragraph 60 -- actually, I'd like to look at the table. You can refer to 60 if you want. But looking at the tables on your Appendix C, working from figure 3 of the 2017 credit card report for general purpose credit cards, it shows that the highest Total Cost of Credit to the consumer would be in the deep subprime category at about

25 percent, right?
A Are you saying general purpose or private label?
Q General purpose.
A General purpose, yeah, approximately that.
Q And in the private label cards, it indicates the highest rate for deep subprime to be up about 40 percent. Is that right?
A Approximately, yes.
Q I'm sorry, I didn't hear your answer.
A I apologize, I thought I'd answered it. Can you restate the question? I'm sorry. I was wondering why you didn't go on.
Q Yeah. For the private label, it shows that the highest rate is for the deep subprime at approximately 40 percent Total Cost of Credit to the consumer, right?
A Yes.
Q Okay.
A Sorry about that.
Q And the subprime rates are less than those, at something below 20 percent for the general purpose credit cards and about 32 percent for the private label cards, right?
A Yeah, I'd say that's right within a percent of

two, about.

Q All right. Now I'd like to look at the charts on the prior page of your report, figure 1 and figure 2 from the 2021 report. It shows that for the years from 2017 to 2020, the Total Cost of Credit for deep subprime accounts in the general purpose cards is around 30 percent, right?

A Yeah, I think I had said 30 to 32 approximately. But yeah, I mean, approximately 30 percent. It's somewhere -- it's always somewhere above 30, but it's pretty close to 30.

Q Slightly above 30.

And the Total Cost of Credit for deep subprime on the general purpose cards was about -- strike that.

Okay. Yeah, looking at the chart below that, in figure 2, for the private label cards, the Total Cost of Credit to the consumer for those 4 years was at or below 40 percent for deep subprime; correct?

A Subprime and deep subprime is the category.

Q Okay.

A But yeah, approximately 35 to 40 percent.

Q And for subprime in the general purpose cards, it's 25 percent or below for the 4 years, 2017 to 2020; correct?

A Approximately 25 percent. But if -- if --

Q Twenty-five percent or below, I see, approximately, right.

A Well, I mean, it would go on either side of -- of that. I think one might -- like, 2019 might be a little above. The others might be a little -- 2018 might be closer. The others are below. But, I mean, they're within a percent or so of 25 percent.

Q Okay. And as you indicated for the private label cards, it's in the same category, 40 percent of less as the deep subprime; correct?

A Yeah. Though I -- I downed it 35 to 40 just to be more precise.

Q Okay.

A But it is in the same category.

Q So and for each of these two categories, subprime and deep subprime, the numbers are fairly consistent over the five years that we've looked at; correct?

A They're within the ranges that we -- we talked about, so within a couple percentage points of each other.

Q Right. So there are slight adjustments of a couple percentage points each year. But there's nothing like 20 percent of 50 percent swings, is there?

A No. And the biggest difference -- like when

you split subprime and deep prime, I mean, there's a 5-ish percent difference between those.

Q But within the categories, just a couple of percent over the five years, right?

A Yeah.

Q They stay relatively stable?

A Correct. If you looked underneath that, there's probably more variability. But the averages are pretty consistent.

Q Okay. And as an economist, you would expect that the lenders charging these rates to be factoring in the cost of capital, their expense structures, their collections rates, and the like, to be charging rates that are profitable, right?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A So I'll answer that and then modify or append a prior answer. I would expect them to be charging rates that allow them to make a profit and cover their expenses, yes.

One of the -- as you -- if you look at the second page of Appendix C, you'll see the display between interest and fees. So if you're trying to look at the amount that any individual consumer is paying, it's going to differ between those who paid fees and

those who didn't. Those that repaid their credit in such a way that they incurred fees are going to have a higher Total Cost of Credit than those people who repaid their -- their -- the amounts borrowed and didn't end up incurring fees. So any amount that any individual consumer paid is going to be variable based on that. But the overall rate that the portfolio of people paying is consistent in the ways we discussed.

Q Okay. So the rates being paid by the consumers in a portfolio would equate out to the rates that are shown on the charts because these are averages or aggregates of large populations, right?

A The -- the reason I'm pausing is because when you say "a portfolio," what I was -- I would -- and I think what you're asking is, given everyone whose data is included in these, the CFPB calculation, the overall rate that they're paying is going to be what's shown in the CFPB rates here. But any individual person underneath that might pay a different effective rate.

Q And why is that?

A If I -- if you paid off your credit card every month, even if you're deep prime, you're -- you're not paying any interest. If I, however, carry a large balance and pay late, I'm going to pay more interest and incur lots of fees. So the -- the cost that I am

incurring for the credit I have, which might be the same amount borrowed as you, is going to be higher than you would pay if you're paying it off every month. And we might both be subprime or deep subprime.

Q Can you explain that to me? I looked back at your paragraph 59 to find that Total Cost of Credit. Explain to me what you just said, how it relates to the definition of the Total Cost of Credit.

A So the Total Cost of Credit is what a person is paying for the credit they receive. So on a credit card, they -- if you make your payment, basically, at the end of the month you incur -- or you make a purchase, you end up actually not paying interest on that amount that you received credit on. If you carry it over into the next period, then you do pay interest on that amount.

So if you imagine two people, one person who pays off their credit card every month and one person who carries a balance, the first person actually has zero cost of credit 'cause they're paying it off. The second person is going to have a positive cost of credit because they are carrying a balance, and therefore, incurring interest. Imagine there's a third person who not only carries a balance but pays late, that person is not only paying the interest, but they're also paying

the late fee associated with that.

Q So what does it mean in the Total Cost of Credit when it refers to "payments by consumers to issuers as an annualized percentage of cycle-ending balances"?

A So to come up with a rate, you need a denominator. You need the amount of money you paid, but then you need to put that over some type of denominator. Because I could -- two people could have paid a hundred dollars in interest. But if you had, basically, bought $10,000 in purchases, and I bought $100 in purchases, well, my actual interest rate is going to be much higher because I paid $100 in interest and only bought $100.

So in that situation, I had 100 percent interest rate. You had $10,000 in purchases and paid 100 percent in interest. So your interest rate is going to be 100 times lower than my rate.

Q Okay. I'd like to focus now back on the charts, figure 1 and figure 2 on your Appendix C, looking at the change in rates from 2019 to 2020 for both the Total Cost of Credit, revolving accounts, general purpose, and the private label.

A Yes.

Q Okay. So would you agree with me that for the nine different credit score tiers shown and for the

overall Total Cost of Credit for both types of account, every single category shows a decline in the Total Cost of Credit for consumers from 2019 to 2020; correct?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A So when you say "nine" categories shown, I'm not sure what the nine are. But I would agree that the 2020 rates are lower than the 2019 rates.

Q Well, in the table 1, there are five separate categories plus overall. In figure 2, there are four separate categories plus the overall. So I added the five and the four; that's nine categories that they're measuring.

A Isn't it 11? I mean, 11 sets of bars?

Q Well, it combines the subprime and deep subprime into one category in the second, and then the two overall. However you look at it, every single bar chart in figure 1 and figure 2 shows a decline in rate of the Total Cost of Credit from 2019 to 2020; correct?

A I would agree, however you're -- in every bar chart there -- however you want to calculate them, yes, the 2020 rates are lower than the 2019 rates.

Q All right. Let's go to the report and see if we can find page 47.

All right. Did you find it?

A Yes, I'm on page 47 of the 2017 report.
Q I'm looking at the 2021 report.
A Oh, well -- well, no.
Q Sorry.
A No problem. I was going to clarify, but then I thought it would be the one.
Q Exhibit 107.
A Yeah, I got that. Sorry.
All right. It has 2.5 "Delinquency" at the bottom. Is that accurate?
Q It's the page that you pulled figure 1 and figure 2 from.
A Okay. Let's make sure we're in the right place then.
Maybe I'm -- I might have been -- I was on 27, my apologies. Yeah, sorry.
Okay. Got it. Now I'm on page 47 of the 2020 report.
Q Okay. And it has the two bar charts?
A Yes.
Q Right. If you look at the text there, it says, "On the private label side," Total Cost of Credit, "on revolving accounts similarly rose in 2019 before receding in 2020, both overall and for every credit tier except superprime," right?

A I do see that.
Q Well, and we're not really dealing with superprime in this case much, are we?
MR. BALOGH: Object to the form.
THE REPORTER: Acknowledged.
A I have not analyzed how many people are superprime in the potential class. But I think we agreed that most of the people in the class are probably in the -- the lower tiers.
Q Right. So this again, it says that every credit tier that's relevant here decreased or receded in 2020, right?
A The -- I would take out "that's relevant here," and I would just say the tiers that are -- I mean, I'd -- I'd agree with what's said in the statement.
Q Okay. If you go back -- and there was economic factors that were driving interest rates down 2019 to 2020; correct?
A I would -- yes, I would expect that there were economic factors which led to the reduction of rates in 2020, probably related to COVID.
Q Right. And if you look back one page, at page 46, the last sentence says, "Between August 2019 and March 2020, the prime rate decreased a total of 2

percentage points, which drove the decline in," Total Cost of Credit, "because most consumer credit cards have variable rates that are tied to changes in the prime rate," right?

A Yes.

Q So it's showing the prime rate is dropping 2 percentage points between 2019 and 2020, right?

A Yes.

Q And as a major national corporate lender, you would expect AFF to be able to obtain its own credit at or around somewhere near the prime rate, right?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A I haven't looked at how AFF is capitalized and their source of the credit. So I don't actually know what their cost of capital is.

Q Well, you would expect their cost of capital would be following a national trend, like this decline in the prime rate; correct?

MR. BALOGH: Object to the form.

A I think that's an overgeneralization that --

THE REPORTER: Acknowledged.

THE WITNESS: Sorry.

I would see I would need to look at their capital structure to answer that question. I don't

think it has to be tied to the prime rate.

BY MR. GREEN:

Q Well, not necessarily tied to, but would be following the same trends, right? I mean, these are national economic interest rate trends, right?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A So they could have -- their -- their borrowing might be locked in so that it's locked in at historical rates. So simply because rates fall doesn't mean that their cost of capital would fall because they might have historical interest rates on a variable. So it might not be a one for one move.

Q Do you recall from the testimony we looked at before what change AFF made to its standard rate and its security agreements in California in 2020?

A I remember the assessment about there was testimony about the rate changing. I don't know if it was specific to California or not.

Q Well, it included California, right? Not necessarily specific to but included?

A I -- I would assume it included California, yes.

Q And it increased from 144.59 percent to 170 percent in 2020; correct?

A That's --

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A That's my recollection as I sit here now, yes.

Q All right. And in your report, you do not identify any economic factors that could in any way justify this increase at a time when the Total Cost of Credit in these data and in the market were declining, isn't that correct?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A That's outside my assignment. I wasn't -- didn't look at that in any way.

Q Nothing in your report or in your opinions is in any way intended to justify or establish the basis for the standard rates charged by AFF during the class period, isn't that correct?

MR. BALOGH: Object to the form.

THE REPORTER: Acknowledged.

A Yes, that's outside my assignment.

Q All right. And nothing in your report ties any facts you discovered about AFF's business to the difference between deep subprime rates shown in the CFPB data at 40 percent or below and the rate charged by AFF in a range from 120 to 170 percent, isn't that correct?

CERTIFICATE OF DEPOSITION OFFICER

I, AERIK BRANCH, the officer before whom the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of said proceedings are a true and accurate record to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

AERIK BRANCH
Notary Public in and for the
State of Washington

[X] Review of the transcript was requested.

CERTIFICATE OF TRANSCRIBER

I, CAYLA LOTT, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Dated: March 31, 2022

CAYLA LOTT